

REMARKS

Dynamic and Episodic Content

The Examiner admits that “[t]he combination of Kloba-Arsenault does not specifically disclose that the content is *of dynamic, episodic content*.” *Office Action*, 4. The Examiner relies upon the newly cited Arora reference (U.S. patent publication number 2003-0018972) for the premise of teaching “portions of media channels that are updated over a predetermined time period.” *Office Action*, 4. The Examiner also notes that “the claimed limitation ‘episodic’ is nowhere found in Applicant’s specification.” *Office Action*, 4.

With respect to the contention that ‘episodic’ content is not disclosed by the Applicants’ specification, the Applicants respectfully disagree. An applicant shows possession of a claimed invention using such descriptive means as words, structures, figures, and diagrams. See *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). There is no *in haec verba* requirement; an objective standard for determining compliance with the written description requirement is, “does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.” *In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989); see also *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575 (Fed. Cir. 1985) (querying whether the disclosure of the application “reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter”) (quoting *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983)). Express, implicit, or inherent disclosure is permissible in this regard. See MPEP § 2163(I)(B); see also *Hyatt v. Boone*, 146 F.3d 1348, 1353 (Fed. Cir. 1998) (requiring inherent disclosure to be understood from the detailed description by one of ordinary skill in the art).

In this regard, the specification states that “[e]mbodiments of the present invention provide a very powerful media user interface. A specific application to audio media materials and personalized radio is disclosed but it will be appreciated that other embodiments of the present invention will provide a user interface to video materials or other media.” *Specification*, 7:4-7. Further, the specification discusses that “[s]ome of the audio content is pre-programmed by a publisher (or publishers) 402 and propagated via a distribution network 404 operating across the Internet.” *Specification*, 12:8-9. “Some publisher-defined channels correspond to music genres and sub-genres. Other pre-programmed channels may include radio shows, news materials, etc.” *Specification*, 13:4-5. The specification states even further that “[a]udio-related embodiments combine the customizability and wide range of choices of digital media with the immediacy, serendipity, ubiquity, and continually refreshed content of the radio experience. Customized audio content is pre-cached allowing the user to choose among multiple immediately available programming offerings.” *Specification*, 7:8-12.

Notwithstanding the plethora of support for episodic media, the Applicants contend that the Arora reference fails to disclose the same. The Arora reference is best described as ‘The TV Guide Channel’ or a program guide that one might find on cable or satellite television. Reference to FIGURE 5 of Arora (and the accompanying discussion in the specification) reflects the same. For example, at step 570 of Arora, a surf list is updated. Arora is merely aggregating metadata related to ‘what is on’ and ‘when’ and presents that to the user through an interface like that of FIGURE 3. This is not episodic content as might be presented through a podcast or other serial program one might access via the Internet or a content provider such as iTunes. Arora is nothing more than an aggregation of lists.

The presently claimed invention groups files into channels as is indicated in, for example, claim 1. A user is 'presented with a selection of pre-defined channels of **dynamic, episodic content.**' By combining that dynamic (ever changing) and episodic (serial, episodes, or chapters) of content (*i.e.*, receiving input from the user specifying a **custom channel** as a combination of at least two pre-defined channels') a '**personalized media service**' may be provided as is set forth in the preamble. Nothing in the Arora reference as it concerns so-called 'episodic' media comes close to that which is recited in each of the present application's independent claims.

Arora and the other cited references also fail to disclose the user selection/combination of dynamic and episodic content. Arora is controlled by a broadcaster pushing metadata out to the TV Guide listing. As such, there can be no customization of content. The customization of content is also apropos with respect to the Arsenault reference, which concerns intelligent caching for the purpose of storage and bandwidth management. The customization of content further distinguishes the presently claimed invention from Arsenault as well as Arora.

A *prima facie* case of obviousness requires that **each and every element** be disclosed in the cited combination of art. The Applicants respectfully contend that the rejection of the independent claims of the present application are overcome for lack of disclosure of 'dynamic and episodic' content in the cited art. Any claim dependent—either directly or via an intermediate dependent claim—upon any independent claim reciting 'dynamic and episodic' media is allowable for at least the same reasons. See 35 U.S.C. § 112, ¶ 4.

Supplemental Media Content

Independent claim 14 also recited a limitation concerning 'supplemental media content.' The Examiner rejects claim 14 as being obvious in light of the Kloba-Arsenault-Arora combination. See *Office Action*, 7. The Examiner, however, fails to address the 'supplemental media content' limitation in the rejection of claim 14. While the rejection repeats the actual claim element, there is nothing in any of the cited references that addresses the Applicants' claimed limitation of supplemental media content.

As noted above, a *prima facie* case of obviousness requires that **each and every element** be disclosed in the cited combination of art. The Applicants respectfully contend that the rejection of independent claim 14 is overcome for lack of disclosure of 'supplemental media content' in the cited art. Any claim dependent—either directly or via an intermediate dependent claim—upon claim 14 is allowable for at least the same reasons as claim 14 with respect to supplemental media content. See 35 U.S.C. § 112, ¶ 4.

Portable Devices

Claims 51-53 all concern transfer of content to a portable device. The Examiner rejects these claims in light of Kloba. See, e.g., *Office Action*, 9 (citing Kloba at 15:52-67). Kloba, as cited by the Examiner, addresses only accessing cached web pages off-line. There is no suggestion of a portable device or transferring media to the same. As such, the Applicants contend that the rejection of claims 51-53 is likewise overcome.

CONCLUSION

The Applicants contend that the cited references—along or in combination—fail to disclose dynamic and episodic content as is found in each and every claim of the present application. The cited references also fail to disclose customization of content.

The Examiner has failed to particularly address the claim limitation 'supplemental media content' as is relevant to independent claim 14.

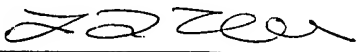
The Examiner's rejection also fails to disclose transferring content to a portable device.

All rejections are believed to have been overcome. In light of the foregoing, the Applicants respectfully request the issuance of a *Notice of Allowance*.

Respectfully submitted,
Tom Carhart et al.

March 24, 2009

By:


Tam Thanh Pham (Reg. No. 50,565)
CARR & FERRELL LLP
2200 Geng Road
Palo Alto, CA 94303
650.812.3400
650.812.3444